

STATE OF SOUTH CAROLINA

(Caption of Case)

Petition for Arbitration of Interconnection Agreement
between Time Warner Cable Information Services
(South Carolina), LLC d/b/a Time Warner Cable and
Home Telephone Company, Inc.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2011 - 245 - C

(Please type or print)

Submitted by: Margaret M. Fox, Esquire

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda
expeditiously

☐ Other: _____

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket Nos. 2011-243-C, 2011-244-C, 2011-245-C, and 2011-246-C

IN RE: Petition for Arbitration of Interconnection)
 Agreement between Time Warner Cable)
 Information Services (South Carolina), LLC,)
 doing business as Time Warner Cable and)
 Farmers Telephone Cooperative, Inc.)
 (Docket No. 2011-243-C))
_____)

IN RE: Petition for Arbitration of Interconnection)
 Agreement between Time Warner Cable)
 Information Services (South Carolina), LLC,)
 doing business as Time Warner Cable and)
 Fort Mill Telephone Company)
 (Docket No. 2011-244-C))
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IN RE: Petition for Arbitration of Interconnection)
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IN RE: Petition for Arbitration of Interconnection)
 Agreement between Time Warner Cable)
 Information Services (South Carolina), LLC,)
 doing business as Time Warner Cable and)
 PBT Telecom, Inc.)
 (Docket No. 2011-246-C))
_____)

RLECs' RESPONSE TO REVISED PETITION FOR ARBITRATION

Farmers Telephone Cooperative, Inc. ("Farmers"); Fort Mill Telephone Company d/b/a Comporium Communications ("Fort Mill"); Home Telephone Company, Inc. ("Home"); and PBT Telecom, Inc. ("PBT") (collectively "RLECs") respectfully submit this Response to the Revised Petition for Arbitration of Time Warner Cable Information Services, LLC, doing business as Time Warner Cable ("Time Warner"), filed with the Public Service Commission of South Carolina ("Commission") on August 16, 2011.

CONTACT INFORMATION

Copies of all pleadings in this matter should be provided to the following:

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STATEMENT OF THE ISSUES

The primary issue for decision here is whether Time Warner is entitled to adopt the Interconnection Agreements between Sprint Communications Company, LP ("Sprint") and the respective RLECs ("the Sprint-RLEC ICAs"). This question turns on the issue of whether or not Time Warner is entitled to request interconnection directly with RLEC, an issue which the Commission previously expressly declined to address in Docket Nos. 2008-325-C through 2008-329-C. See Order No. 2009-356(A) at 18-19 ("Time Warner has represented to this Commission that it has no current plans to

interconnect with the RLECs other than through its current wholesale arrangement. Accordingly, in this Order, we address only Time Warner's interconnection through a wholesaler of its choosing.") The question of whether Time Warner is entitled to direct interconnection, in turn, depends on whether or not Time Warner is considered a "telecommunications carrier"¹ providing "telecommunications service"² under federal law, for purposes of triggering RLECs' obligation to provide interconnection under Section 251 of the Telecommunications Act³.

Once again, Time Warner is attempting to pull a "bait and switch." See Order No. 2005-484 in Docket No. 2004-280-C (in which the Commission referenced the changing positions of Time Warner; stated that it was still not clear exactly what services Time Warner sought to provide; and noted that it appeared Time Warner was really seeking authority to negotiate for interconnection with the RLECs). In the most recent iteration cited above,⁴ Time Warner represented to the Commission that it would continue using Sprint for the foreseeable future, but stated that it did not want to be prohibited from using "other" wholesale carriers if circumstances changed in the future. In fact, Time Warner's clear intention all along was to find a way to cut out the wholesale telecommunications carrier in the middle and to obtain direct interconnection with RLECs.

¹ The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. 47 U.S.C. § 153(44).

² The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(46).

³ Section 251(a) provides in part that "[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of *other telecommunications carriers*." (Emphasis added.)

⁴ See Order No. 2009-356(A) in Docket Nos. 2008-325-C through 2008-329-C.

It is true, as Time Warner states in its Petition at ¶ 5, that the Commission held in Order No. 2009-356(A) that Time Warner's Digital Phone Service is a telecommunications service as defined by S.C. Code Section 58-9-10. However, it remains true that the Federal Communications Commission ("FCC") has not classified Voice over Internet Protocol ("VoIP") service as a telecommunications service. Thus, RLECs maintain that the provision of VoIP service by Time Warner does not constitute the provision of telecommunications service under federal law for purposes of triggering the obligation to allow interconnection by Time Warner under Section 251 of the Act.

Nor does the provision of other services entitle Time Warner to interconnection. For example, Time Warner claims that it will provide "wholesale telecommunications services" to itself and possibly to other carriers. See Petition at ¶¶ 8, 18. Time Warner does not in its Petition specify what those "services" might be, but apparently they intend to obtain interconnection from RLECs and then "provide" that interconnection to themselves and others. While that would certainly be a creative interpretation of the law, the Commission should not allow Time Warner to equate obtaining interconnection from RLECs to the provision of services of any kind by Time Warner.

Time Warner also claims to provide "point-to-point transmission services," which by definition would flow from one point to another and not through the interconnection with RLEC. Thus, even if these services could be considered telecommunications services under federal law (a point with which we disagree), they would not be offered through the interconnection arrangement, and thus cannot serve as the basis for a valid interconnection request. FCC Regulations provide:

A telecommunications carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer

information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.”

47 C.F.R. Section 51.100(b).

RLECs’ position regarding the interpretation of FCC Regulation 51.100(b) is completely consistent with the FCC’s Time Warner Declaratory Ruling Order. The Commission also cited the FCC’s holding in Order No. 2009-356(A) by stating:

We intend this Order to be fully consistent with the FCC’s Time Warner Declaratory Ruling In that decision, the FCC held that CLECs providing wholesale telecommunications services to other service providers are entitled to interconnection under Section 251 of the Telecommunications Act of 1934, as amended. However, the FCC expressly limited its ruling to ‘telecommunications carriers that provide wholesale telecommunications service and that seek interconnection *in their own right* for the purpose of transmitting traffic to or from another service provider.’

Order No. 2009-356(A) at p. 19 (underlining emphasis added; italics in original).

Time Warner’s assertion, at ¶ 8 of its Petition, that the FCC “recently reaffirmed the unequivocal right of competitive carriers such as Time Warner Cable to interconnect with rural ILECs” is a mischaracterization of the FCC’s recent Order In the Matter of CRC Communications of Maine, Inc. and Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al., Declaratory Ruling, FCC 11-83, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-91 (rel. May 26, 2011) (“CRC Declaratory Ruling”). In fact, the CRC Declaratory Ruling involved a situation exactly like that in the Time Warner Declaratory Ruling Order – i.e., Time Warner, as a VoIP provider, interconnecting with an ILEC through a true telecommunications wholesale provider in the middle. The issue in that case was not, as Time Warner suggests, whether a VoIP provider is entitled to interconnection. The

primary issue in the case was whether incumbent rural telephone companies that held rural exemptions under Section 251(c) were obligated to negotiate with true telecommunications service providers for interconnection services under Sections 251(a) and (b). The FCC held that they are.

In the present case, RLECs are not arguing and have not argued that they are not obligated to interconnect with true telecommunications carriers. In fact, RLECs have interconnected with Sprint, Time Warner's current wholesale telecommunications service provider. RLECs have argued only that they are not obligated to interconnect with carriers that do not meet the statutory and regulatory requirements to qualify for interconnection.

RLECs are in full compliance with existing Commission and FCC orders and regulations regarding their interconnection obligations. RLECs have interconnected with Sprint and have allowed Sprint to exchange information service traffic through those interconnection arrangements. This has allowed Time Warner to provide its Digital Phone Service in RLECs' respective service areas. If Time Warner chooses to use a true telecommunications service wholesale provider other than Sprint to obtain interconnection with RLECs, that would be permitted by law. However, RLECs do not believe it is appropriate or consistent with current law and regulations to permit Time Warner to obtain direct interconnection with RLECs. If this were allowed, it would potentially open RLECs up to obligations to non-telecommunications carriers that go well beyond the requirements of existing law.

Furthermore, Time Warner has requested that it be allowed to opt into interconnection agreements whose initial terms have expired. Even if the Commission

were to determine that Time Warner is entitled to direct interconnection, the RLECs do not believe it would be appropriate to allow Time Warner to opt into agreements when the initial terms of those agreements have expired. The agreements in question each had an initial two-year term, beginning in 2007-2008 and ending in 2009-2010 (depending on the RLEC), with the most recent agreement expiring on June 1, 2010, well over a year ago.

The Sprint-RLEC ICAs are presently subject to termination or renegotiation, pursuant to their terms. FCC rules limit carriers' ability to opt into existing interconnection agreements as follows:

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.⁵

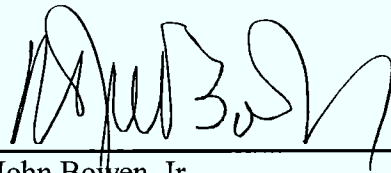
These agreements were approved by the Commission in 2007 and the first half of 2008. RLECs believe that the "reasonable period of time" has passed for opting into the Sprint-RLEC ICAs.

WHEREFORE, For the reasons stated herein, we respectfully request that the Commission find that Time Warner's requests for interconnection with RLECs are not *bona fide* requests under Section 251 of the Telecommunications Act of 1996 and that, therefore, RLECs have no obligation to allow Time Warner to adopt the Sprint-RLEC ICAs, and the provisions of Sections 251 and 252 of the Act (including the statutory time frames included therein) do not apply to Time Warner's requests; and that the Commission dismiss Time Warner's Petitions for Arbitration in these dockets. Alternatively, in the event the Commission disagrees with RLECs' position and

⁵ 47 C.F.R. § 51.809(c) (emphasis added).

determines that Time Warner is a telecommunications carrier entitled to request interconnection from RLECs, RLECs ask that the Commission find that it is not reasonable to allow a carrier to opt into an interconnection agreement if the initial term of the agreement has expired, and deny Time Warner's request to adopt the respective Sprint-RLEC ICAs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. John Bowen, Jr.", written over a horizontal line.

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ATTORNEYS FOR FARMERS
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FORT MILL TELEPHONE COMPANY
D/B/A COMPORIUM
COMMUNICATIONS; HOME
TELEPHONE COMPANY, INC.; AND
PBT TELECOM, INC.

Columbia, South Carolina

August 19, 2011

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket Nos. 2011-243-C, 2011-244-C, 2011-245-C, and 2011-246-C

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_____)

**CERTIFICATE
OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached RLEC's Response to Time Warner Cable's Revised Petition For Arbitration to the following parties causing said copies to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

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August 19, 2011

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